

 ORIGINAL

PROPERTY USE AGREEMENT

THIS PROPERTY USE AGREEMENT ("Agreement") is made this 12th day of February 2013 ("EFFECTIVE DATE"), by and between the SAN JOSE ARENA MANAGEMENT, LLC, a Delaware limited liability company ("MANAGER"), also known as HP Pavilion Management ("HPPM"), and the CITY OF SAN JOSE ("CITY") for the use of Suite C11 in the HP Pavilion at San Jose located at 525 West Santa Clara St, San Jose, California 95113 (the "City Suite").

RECITALS

WHEREAS, on December 19, 2000, the CITY and MANAGER entered into that certain Amended and Restated San Jose Arena Management Agreement pursuant to which MANAGER operates the City-owned Arena known as HP Pavilion at San Jose (the "Arena"), which Agreement has been subsequently amended from time to time and together with such amendments shall be referred to as the "Management Agreement";

WHEREAS, pursuant to, and as consideration under, the Management Agreement, CITY retains the use of Suite C11 for all events at the Arena;

WHEREAS, in June 1990, the CITY approved the creation of the San Jose Arena Authority, a nonprofit corporation formed to oversee the operation and management of the Arena on behalf of the City;

WHEREAS, on June 12, 2012, the City Council adopted the FY2012-13 Budget, and specifically, Manager's Budget Addendum #47, approving for Fiscal Year 2012-13 only, the lease of the use of Suite C11 for eight (8) San Jose Sharks home games as an interim measure to supplement City funding for the Arena Authority;

NOW, THEREFORE, it is agreed as follows:

1. Grant of Temporary Use.

a. CITY hereby grants to MANAGER temporary use ("Temporary Use") of Suite C11 for the purposes of leasing the Suite to others for EIGHT (8) San Jose Sharks games during the 2012-13 NHL SEASON, as specified herein.

b. MANAGER expressly agrees and acknowledges that this Agreement constitutes a license for use of Suite C11 during the scheduled time periods only and does not and shall not grant MANAGER any right of possession, estate, title or other interest whatsoever in or to Suite C11 for any other time or purpose.

c. Manager shall retain all proceeds from such Temporary Use. Manager shall not need further City approval to affect such Temporary Use except as to the approval of insurance policies set forth in Section 7 below.

2. Schedule. Following the release of the NHL Regular Season schedule, but no later than January 31, 2013, the MANAGER will designate EIGHT (8) Sharks home games

during the 2012-13 NHL Regular Season schedule for which the City Suite shall be used by MANAGER ("Designated Games"), subject to the mutual approval of the Parties which approval shall not be unreasonably withheld.

3. Duration of Temporary Use. Subject to the limits herein stated, the Temporary Use is a non-exclusive right to use of Suite C11 during the period of time beginning on the effective date of this Agreement, and ending at twelve midnight on June 30, 2013, (but only on the dates set forth herein) after which time it shall automatically terminate.

4. Fee. In consideration for such Temporary Use, the sufficiency of which is hereby acknowledged, MANAGER has caused to be paid the amount of FORTY-EIGHT THOUSAND DOLLARS (\$48,000) to the CITY as of the Effective Date of this Agreement.

5. City Contact. Unless otherwise stated herein, CITY Project Coordinator for any purposes related to this Agreement shall be Leland Wilcox, Senior Executive Analyst, or such other person as may be designated by CITY.

6. Assignment. MANAGER shall only have the right to sell a license for the Designated Games. This Agreement is made and entered into solely for the benefit of the CITY and MANAGER, and no other third person shall have any right of action under this Agreement.

7. No Agent. MANAGER does not become an agent or employee of CITY by virtue of this Agreement and/or the Temporary Use, and the parties expressly agree that no agency or employment relationship is created by this Agreement.

8. Insurance. MANAGER agrees at no cost to City to have or cause to have and maintain insurance coverage in effect for every Designated Game. Said coverage will be a broad form comprehensive general liability or commercial general liability policy of Insurance, including contractual liability coverage for obligations under this Agreement and host liquor liability coverage, covering the Suite in the amount of \$1,000,000, combined single limit. Policy shall be in the occurrence form and name MANAGER as an additional insured. This policy shall provide primary coverage to MANAGER; when any policy issued to MANAGER provides duplicate coverage or is similar in coverage, MANAGER's policy will be excess over this policy. This policy shall be with a company and in a form reasonably satisfactory and acceptable to MANAGER.

All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. MANAGER agrees to provide CITY with a copy of said policies, certificates and/or endorsements before the first Designated Game.

9. Indemnification. MANAGER shall defend, indemnify and hold harmless the CITY, its respective officers, agents, directors and employees, from and against all claims, suits, actions, causes of action or liability of any kind, nature or description, brought by any and all persons for or on account of any loss, damage, death of or injury of persons, property or any interest, tangible, or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from the performance or obligations of MANAGER under this Agreement or the failure of MANAGER to perform under

this Agreement, except as may arise from the gross negligence or willful default of CITY, or its officers, agents, directors and employees.

10. Condition of Suite C11. After each use under this Agreement, MANAGER shall return Suite C11 to the CITY in as good a condition as when received. MANAGER shall be liable to the CITY for any and all damages to Suite C11 which results from any actions or omissions of MANAGER, its employees, agents, or licensees.

11. Termination.

a. CITY may terminate this Agreement only in event MANAGER doesn't pay the Fee as required, or provide the Insurance coverage as required, or Manager is in violation of any federal, state or local law, and then only after giving MANAGER two (2) calendars days' written notice of such failure and opportunity to cure.

b. CITY's City Manager is empowered to terminate this Agreement on behalf of CITY.

12. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as:

To CITY:

City of San Jose
Attention: Leland Wilcox
200 East Santa Clara Street,
17th Floor Tower
San Jose, CA 95113
(408) 535-8172

To MANAGER:

San Jose Arena Management, LLC
Attention: EVP Business Operations
525 West Santa Clara Street
San Jose, CA 95113
(408) 999-5792

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against CITY, its officers or employees shall also be served in the manner specified above to the following address:

To CITY ATTORNEY:

City of San Jose
Richard Doyle, City Attorney
200 East Santa Clara Street, 16th Floor Tower
San Jose, CA 95113
Richard.Doyle@sanjoseca.gov

To General Counsel: San Jose Arena Management, LLC
John Tortora, General Counsel
525 West Santa Clara Street
San Jose, CA 95113
JTortora@sharkssports.net

Notice shall be deemed effective on the date delivered or, if appropriate, on the date delivery is refused.

13. Nondiscrimination. MANAGER shall not discriminate, in any way, against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

14. Conflict of Interest. MANAGER shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement. MANAGER shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Agreement.

15. Gifts.

a. MANAGER is familiar with CITY's prohibition against the acceptance of any gift by any CITY officer or designated employee, which prohibition is found in the San Jose Municipal Code.

b. MANAGER agrees not to offer any CITY officer or designated employee any gift prohibited by said Code.

c. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Contractor. CITY may exercise any remedies it has in law or equity.

16. Compliance With Laws. This Agreement is expressly conditioned on MANAGER's compliance with all applicable laws, ordinances, codes and regulations of the federal, state and local governments with respect to MANAGER's operation and use of Suite C11.


17. Governing Law. CITY and MANAGER agree that the law governing this Agreement shall be that of the State of California.

18. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

19. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:



PATRICIA A. DEIGNAN
Chief Deputy City Attorney

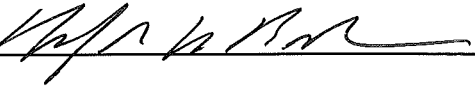
"CITY"

CITY OF SAN JOSE, a municipal corporation

By 

Norberto Duenas
Deputy City Manager

SAN JOSE ARENA MANAGEMENT, LLC, a
Delaware limited liability company

By 

MALCOLM BORDELON

Executive Vice President, Business Operations

AXIS 8000(08/10)	CERTIFICATE OF INSURANCE	02/14/2013
PRODUCER American Specialty Insurance & Risk Services, Inc. 142 North Main Street Roanoke, Indiana 46783		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.
INSURED San Jose Sports & Entertainment Enterprises LLC, San Jose Sharks, LLC, San Jose Arena Management LLC dba HP Pavilion Management, Sharks Minor Holdings, LLC dba Worcester Sharks, Sharks Sports & Entertainment, LLC, Bay Area Tennis, Home Advantage Properties LLC 525 West Santa Clara Street San Jose, CA 95113		INSURERS AFFORDING COVERAGE INS. A: AXIS Insurance Company INS. B: INS. C:
		CERT NUMBER: 1001089712

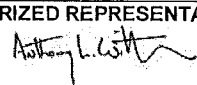
COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS LTR	POLICY TYPE	POLICY NUMBER	POLICY EFFECTIVE	POLICY EXPIRATION	LIMITS
A	GL	AXGL05100252-12	12/01/2012 12:01 a.m.	01/01/2014 12:01 a.m.	General Aggregate-Per Location
					Products-Completed Operations Aggregate
					Personal and Advertising Injury
					Each Occurrence
					Damage to Premises Rented to You (Any One Premises)
					Medical Expense Limit (Any One Person)
A	AUTO	AXAL05100133-12	12/01/2012 12:01 a.m.	01/01/2014 12:01 a.m.	Combined Single Limit
					Physical Damage Deductible - Collision \$1,000
					Physical Damage Deductible - Comprehensive \$500
					Non-Owned/Hired Auto Liability
					Hired Auto Physical Damage Deductible - Collision \$1,000
					Hired Auto Physical Damage Deductible - Comprehensive \$100

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

- The General Liability policy is subject to a \$10,000 per occurrence Self-Insured Retention.
- The Certificateholder is only an additional insured with respect to liability caused by the negligence of the Named Insured as per Form AXIS 1003-Additional Insured-Certificateholders, but only with respect to USE OF SUITE C11, EFFECTIVE FEBRUARY 14, 2013.

CERTIFICATE HOLDER CITY OF SAN JOSE 200 EAST SANTA CLARA STREET, 17TH FL TOWER SAN JOSE, CA 95113	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

CONTRACT TRANSMITTAL TO CITY MANAGER

CONTRACTOR: San Jose Arena Management, LLC Business Tax License# **(MANDATORY)**
6609441210

CONTRACTOR CONTACT: ATTN: EVP BUSINESS OPERATIONS

CONTRACTOR ADDRESS: 525 WEST SANTA CLARA STREET, SAN JOSE, CA 95113

NEW CONTRACT: ☒ **AMENDMENT:** ☐ **IF AMENDMENT, LIST NUMBER:** _____

TERM OF THIS AGREEMENT: 01/14/13 TO 06/30/13 **AMOUNT OF THIS AGREEMENT:** \$48,000 (REVENUE TO CITY) _____

TERM OF ORIGINAL AGREEMENT: _____ **TO** _____ **AMOUNT OF ORIGINAL AGREEMENT:** _____

CITY COUNCIL DATE: n/a

COUNCIL AGENDA ITEM NUMBER: n/a

COUNCIL RESOLUTION NUMBER: n/a

BUDGET REFERENCE: REVENUE TO CITY TO BE BOOKED INTO THE APPROPRIATE OED REVENUE CODE

BUDGET: n/a

APPN: n/a

ORD/RES: n/a

DEPT.: Manager (OED)

CONTACT: Alfredo Iraheta

PHONE: 535-8174

TYPE OF CONTRACT: Property Use

CEQA STATUS: Not a Project File #P10-066(e)

DESCRIPTION OF CONTRACT: *(What work will the contractor accomplish?)*

City grants temporary use of Suite C11 for the purposes of leasing the suite to others for eight San Jose Sharks games during the 2012-13 NHL Season.

CONTRACTOR SELECTION PROCESS (CHECK ONE): RFP ☐ RFQ ☐ **Date Conducted:** _____

n/a

INFLUENCE OF LOCAL PREFERENCE:

n/a (y/n) Local Business – At least one employee in Santa Clara County

n/a (y/n) Small Business – 35 or fewer employees companywide

n/a (y/n) Award influence by Local Preference Policy

n/a (\$ value) Closest non-Local bid

ISSUES: *(Please list any issues of importance.)*

The outcomes of this contract further the vision of San Jose as the world's most livable big city, and supports Initiative 12 of the Economic Development Strategy to "Encourage Sporting Teams, Events, and Facilities, Professional as well as Amateur."

COORDINATION:

This contract has been coordinated with the City Attorney's Office and Risk Management.

Department Head Signature _____

Date Feb 6, 21 13

City Manager's Office Signature _____

Date 2/12/14

04/08